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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 Securities and Exchange Commission,

Case No. 2:23-cv-00288-APG-DJA

7 Plaintiff,

Order

8 v.

9 Markman Biologics Corp. and Alan
Shinderman,

10 Defendants

11 and

12 Aspen Asset Management Services, LLC,

13 Relief Defendant.
14

15 Before the Court is the parties' stipulated protective order (ECF No. 20). The parties
16 request that the Court enter a protective order to govern their exchange of confidential
17 information. However, the parties fail to state the governing standard for filing documents under
18 seal with the Court. The parties also include certain provisions that do not comport with the
19 Court's local rules governing sealed documents. This order reminds counsel that there is a
20 presumption of public access to judicial files and records. A party seeking to file a confidential
21 document under seal must file a motion to seal and must comply with the Ninth Circuit's
22 directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and
23 *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

24 **IT IS THEREFORE ORDERED** that the parties' stipulated protective order (ECF No.
25 20) is **granted subject to the following modifications:**

- 26 • Section 7(b) is removed from the stipulated protective order because Local Rule
27 IA 10-5 addresses the procedures for filing documents under seal and because the
28

1 Clerk's office and the undersigned do not require physical copies of sealed
2 documents.

- 3 • Section 7(c) is modified as follows:
 - 4 ○ To the extent that it is necessary for a party to discuss the contents of any
5 confidential information in a written pleading, then such portion of the
6 pleading may be filed under seal in accordance with Local Rule IA 10-5.
7 In such circumstances, counsel shall prepare two versions of the pleadings,
8 a public and a confidential version. The public version shall contain a
9 redaction of references to CONFIDENTIAL-SUBJECT TO PROTECTIVE
10 ORDER documents. The confidential version shall be a full and complete
11 version of the pleading and shall be filed with the Court as outlined in
12 Local Rule IA 10-5.
 - 13 • Section 11(b) is removed from the stipulated protective order.
 - 14 • The Court has adopted electronic filing procedures. Attorneys must file
15 documents under seal using the Court's electronic filing procedures. *See* Local
16 Rule IA 10-5. Papers filed with the Court under seal must be accompanied with a
17 concurrently-filed motion for leave to file those documents under seal. *See* Local
18 Rule IA 10-5(a).
 - 19 • The Court has approved the instant protective order to facilitate discovery
20 exchanges, but there has been no showing, and the Court has not found, that any
21 specific documents are secret or confidential. The parties have not provided
22 specific facts supported by declarations or concrete examples to establish that a
23 protective order is required to protect any specific trade secret or other confidential
24 information pursuant to Rule 26(c) or that disclosure would cause an identifiable
25 and significant harm.
 - 26 • All motions to seal shall address the standard articulated in *Ctr. for Auto Safety*
27 and explain why that standard has been met. 809 F.3d at 1097.
- 28

- 1 • Specifically, a party seeking to seal judicial records bears the burden of meeting
2 the “compelling reasons” standard, as previously articulated in *Kamakana*. 447
3 F.3d 1172. Under the compelling reasons standard, “a court may seal records only
4 when it finds ‘a compelling reason and articulate[s] the factual basis for its ruling,
5 without relying on hypothesis or conjecture.’” *Ctr. for Auto Safety*, 809 F.3d at
6 1097. (quoting *Kamakana*, 447 F.3d at 1179). “The court must then
7 ‘conscientiously balance[] the competing interests of the public and the party who
8 seeks to keep certain judicial records secret.’” *Ctr. for Auto Safety*, 809 F.3d at
9 1097.
- 10 • There is an exception to the compelling reasons standard where a party may satisfy
11 the less exacting “good cause” standard for sealed materials attached to a
12 discovery motion unrelated to the merits of the case. *Id.* “The good cause
13 language comes from Rule 26(c)(1), which governs the issuance of protective
14 orders in the discovery process: ‘The court may, for good cause, issue an order to
15 protect a party or person from annoyance, embarrassment, oppression, or undue
16 burden or expense.’” *Id.* (citing Fed.R.Civ.P. 26(c)). “For good cause to exist, the
17 party seeking protection bears the burden of showing specific prejudice or harm
18 will result if no protective order is granted.” *Phillips v. General Motors*, 307 F.3d
19 1206, 1210-11 (9th Cir. 2002).
- 20 • The labels of “dispositive” and “nondispositive” will not be the determinative
21 factor for deciding which test to apply because the focal consideration is “whether
22 the motion is more than tangentially related to the merits of a case.” *Ctr. for Auto*
23 *Safety*, 809 F.3d at 1101.
- 24 • The fact that the Court has entered the instant stipulated protective order and that a
25 party has designated a document as confidential pursuant to that protective order
26 does not, standing alone, establish sufficient grounds to seal a filed document. *See*
27 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003); *see*
28 *also Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). If

1 the sole ground for a motion to seal is that the opposing party (or non-party) has
2 designated a document as confidential, the designator shall file (within seven days
3 of the filing of the motion to seal) either (1) a declaration establishing sufficient
4 justification for sealing each document at issue or (2) a notice of withdrawal of the
5 designation(s) and consent to unsealing. If neither filing is made, the Court may
6 order the document(s) unsealed without further notice.

- 7 • To the extent any aspect of the stipulated protective order may conflict with this
8 order or Local Rule IA 10-5, that aspect of the stipulated protective order is hereby
9 superseded with this order.

10 IT IS SO ORDERED.

11 DATED: July 31, 2023



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE